

HOUSE No. 4303

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 23, 2012.

The committee on Ways and Means, to whom was referred the Bill relative to the licensing and supervision of debt management services in the Commonwealth (House, No. 4074), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4303).

For the committee,

BRIAN S. DEMPSEY.

HOUSE No. 4303

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to the licensing and supervision of debt management services in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 180 of the General Laws is hereby amended by striking out section 4A,
2 as appearing in the 2010 of the Official Edition, and inserting in place thereof the following
3 section:-

4 Section 4A. (a) As used in this chapter, credit counseling services shall mean: (1) the providing
5 of financial and budgetary advice and judgment to individuals in connection with the creation of
6 a budgetary plan; (2) the creation of a plan whereby an individual turns over an agreed amount of
7 his income to a nonprofit credit counseling corporation which distributes it to the creditors of
8 that individual in accordance with a plan which they have approved and which may provide for
9 smaller payments or a longer term than the original contract; (3) the providing of educational
10 services relating to the use of credit; or (4) any combination of clauses (1), (2) or (3).

11 (b) An attorney authorized to practice law in the commonwealth may render credit counseling
12 services, as specified in clause (2) of subsection (a), within the attorney-client relationship. An
13 attorney may not solicit debt management services business. Each such corporation shall comply

with the provisions of section 8F of chapter 12. Such corporation shall not engage in the practice of law. If a person receiving credit counseling services requires legal advice or counsel, they shall be referred to an attorney of their choice, the local bar association referral service, or a local legal aid program.

(c) Any corporation formed for credit counseling purposes under this chapter which provides debt management services for compensation or gain from or on behalf of the individuals to whom it provides the services or from their creditors shall obtain a license under chapter 255G.

SECTION 2. The General Laws are hereby amended by inserting after chapter 255F the following chapter:-

Chapter 255G.

Section 1. As used in this chapter, the following words shall have the following meanings, unless the context requires otherwise:

“Agreement”, a contract between a provider and an individual for the performance of debt management services.

“Business address”, the physical location of a business, including the name and number of a street.

“Business day”, a calendar day, except for Sundays and legal holidays as listed in the first sentence of clause eighteenth of section 4 of chapter 4.

“Commissioner”, the commissioner of banks.

33 “Consumer”, an individual who has secured or unsecured debt, which arises out of personal,
34 family or household obligations, and who has executed an agreement with a provider.

35 “Creditor”, a person that has extended credit to an individual.

36 “Debt management services”, directly or indirectly receiving an individual’s money to distribute
37 it to 1 or more of an individual’s creditors in partial or full satisfaction of the individual’s
38 secured or unsecured debts; arranging the distribution or assisting an individual in the
39 distribution of an individual’s money to 1 or more of an individual’s creditors in partial or full
40 satisfaction of the individual’s secured or unsecured debts; or acting or offering to act as an
41 intermediary between an individual and 1 or more of the individual’s creditors to reduce, defer,
42 discharge or in any other way modify the terms and conditions of an individual’s obligation to
43 repay secured or unsecured debts.

44 “Division”, the division of banks.

45 “Individual”, a natural person.

46 “Licensee”, a provider that possesses a valid license issued pursuant to section 2.

47 “Person”, an individual, corporation, association, operation, firm, partnership, trust or other form
48 of business association.

49 “Provider”, a person that performs debt management services for compensation or gain, or in the
50 expectation of compensation or gain.

51 “Statement of accounting”, a written or electronic document that a provider prepares for a
52 consumer in accordance with section 16.

“Third party payment processor”, an entity that holds, or has access to, or can effectuate procession of, by any means, the monies of a licensee’s debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee.

Section 2. (a) No person shall engage in or advertise for debt management services in the commonwealth unless such person has first obtained a debt management services license from the commissioner.

(b) A provider shall obtain a license for each of its business addresses.

(c) A license shall not be transferable or assignable.

(d) A licensee shall file a surety bond in an amount and form that the commissioner determines before it may conduct business in the commonwealth.

(e) A licensee shall not conduct business in the commonwealth under a business name other than the business name that is listed on its license.

(f) The commissioner shall promulgate rules and regulations for the administration and enforcement of this chapter.

Section 3. The following persons shall be exempt from this chapter:

(1) a provider’s employees who perform debt management services on the provider’s behalf in the regular course of their employment;

(2) a person organized under section 501(c) of the Internal Revenue Code that receives no compensation or gain for the debt management services from or on behalf of the individuals to whom it provides the services or from their creditors;

(3) judicial officers, individuals acting under the direction of a court, or assignees for creditors' benefit;

(4) a bank as defined in section 1 of chapter 167, a national banking association, a federally chartered credit union, a federal savings and loan association, a federal savings bank, or any subsidiary of the above, or any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any other state, or any subsidiary of the above;

(5) attorneys licensed to practice law in the commonwealth who provide debt management services to consumers with whom the attorney also provides legal services within an attorney-client relationship to, and who do not solicit debt management services business;

(6) persons that provide bill paying services if such persons do not perform debt management service;

(7) creditors or the creditors' employees who negotiate debt settlement with individuals or providers, acting on an individual's or consumer's behalf;

(8) officers or employees of the United States or a state of the United States who perform debt management services for individuals on behalf of the federal government, the commonwealth, a municipality or a state agency, and receive compensation solely from such governmental entities;

(9) certified public accountants licensed in the commonwealth who provide debt management services to consumers with whom the certified public accountant also provides accounting services within an accountant-client relationship to, and who do not solicit debt management services business; and

(10) a third party payment processor which does not provide debt management services.

Section 4. (a) The application for the license and the application for the license renewal shall be in a form prescribed by the commissioner, signed under oath and containaing information as the commissioner shall determine. Applicants shall pay an investigation fee that the secretary of administration and finance shall determine under section 3B of chapter 7. The commissioner shall evaluate the applicant's financial responsibility, character, reputation, integrity and general fitness to determine whether the applicant will act lawfully, honestly, fairly, soundly and efficiently in the public interest. The license shall be for a period of 1 year. The secretary of administration and finance shall determine the license fee annually under section 3B of chapter 7.

(b) The commissioner may participate in a multi-state licensing system for the sharing of regulatory information and for the licensing and application, by electronic or other means, of entities engaged in the business of debt management services. The commissioner may establish requirements for participation by an applicant in a multi-state licensing system which may vary from the provisions set out in this section and section 2. The commissioner may require a background investigation of each applicant for a license to engage in debt management services by means of fingerprint and state and national criminal history record checks by the department of criminal justice information services pursuant to section 172 of chapter 6 and the Federal

113 Bureau of Investigation. If the applicant is a partnership, association, corporation or other form
114 of business organization, the commissioner may require such background investigation by means
115 of fingerprint checks on each member, director, principal officer of such applicant, and any
116 individual acting as a manager of an office location. The applicant shall pay directly to such
117 multi-state licensing system any additional fee relating to participation in such multi-state
118 licensing system.

119 Section 5. (a) The commissioner may deny a license if:

120 (1) the applicant does not satisfy the criteria set forth in subsection (c) of section 4.

121 (2) the application contains information that is materially erroneous or incomplete;

122 (3) the applicant fails to provide information that the commissioner may request, in a timely
123 manner;

124 (4) an officer, director, member or principal of the applicant's business has been (i)
125 convicted of or pled nolo contendere to a felony, or (ii) committed an act involving fraud, deceit
126 or dishonesty;

127 (5) an officer, director, member or principal of the applicant has had a professional license
128 revoked, suspended or subjected to administrative action in any jurisdiction;

129 (6) the applicant or any of its officers, directors, members or principals has defaulted in
130 the payment of money collected for others; or

131 (7) the applicant's license was revoked or suspended in another jurisdiction or the applicant
132 has been issued a regulatory action in another jurisdiction.

133 (b) On or before the 20th day after a license application denial, the commissioner shall enter
134 upon the records a written decision and findings containing the reasons supporting a license
135 denial, and shall send a notice to the applicant via certified mail. On or before the 30th day after
136 the date of the notice, the applicant may appeal the denial to the superior court for Suffolk
137 County, sitting in equity.

138 Section 6. (a) The commissioner may suspend, revoke or deny renewal of a license if:

139 (1) a licensee has violated this chapter or any rule or regulation adopted hereunder or any
140 other law applicable to the conduct of its business;

141 (2) a fact or condition exists that, if it had existed when the licensee applied for a license,
142 would have warranted the commissioner refusing to issue the initial license;

143 (3) the licensee does not satisfy the criteria required under subsection (c) of section 4;

144 (4) the licensee has refused to permit the commissioner to examine the licensee's books and
145 records under this chapter, failed to comply with section 13 or made a material misrepresentation
146 or omission in complying with section 13; or

147 (5) the licensee has not responded within a reasonable time and in an appropriate manner to
148 the commissioner's communications.

149 (b) If the commissioner suspends, revokes, or denies renewal of a license, the commissioner
150 may seek a court order to seize the licensee's books, records, accounts, property or money in a
151 trust account maintained by the provider.

152 (c) Except as provided in section 7, a licensee shall receive notice and a hearing under
153 chapter 30A before the commissioner revokes or suspends a license.

(d) A licensee may deliver a written notice to the commissioner to surrender its license, provided, however, that if a licensee surrenders its license, its civil or criminal liability for acts committed before the surrender is not affected.

Section 7. (a) If the commissioner determines, after giving notice of and opportunity for a hearing, that a licensee has acted in a manner that has violated or would violate this chapter, or a rule, regulation or order hereunder, the commissioner may order the licensee to cease and desist from unlawful acts or practices and take affirmative action to enforce this chapter.

(b) If the commissioner finds that a delay in issuing an order under subsection (a) will irreparably harm the public interest, the commissioner may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the commissioner shall promptly notify the affected licensee in writing that the order has been entered, the reasons for the order and that on or before the 20th day after the receipt of a written request from the licensee, the matter will be scheduled for hearing to determine whether or not such temporary order shall become permanent. If the commissioner does not order a hearing and a licensee does not request a hearing, the order shall remain in effect until the commissioner modifies or vacates it. If a hearing is requested or ordered, the commissioner shall vacate, modify or make the order permanent, by written findings of fact and conclusions of law, after giving the licensee subject to the order notice of and opportunity for a hearing.

(c) The commissioner shall not issue an order under this section, except an order issued pursuant to subsection (b), without prior notice of and opportunity for a hearing. The commissioner may vacate or modify an order under this section upon finding that the conditions that required the order have changed and that it is in the public interest to vacate or modify the order.

(d) Any order issued pursuant to this section shall be subject to review as provided in chapter 30A.

Section 8. (a) The commissioner may examine the books and records of a licensee and have full access to the records related to its business. A licensee shall keep and use its business records in a form, at a location and for a retention period as the commissioner shall promulgate in a regulation, which shall enable the commissioner to determine whether the licensee is complying with this chapter and the rules and regulations promulgated hereunder, and any other law, rule or regulation applicable to its business.

(b) In connection with the examination, the commissioner may:

(1) oblige a licensee to pay expenses on or before the thirtieth day after the licensee receives an invoice, which the division incurs in conducting an examination, including expenses for travel outside the commonwealth;

(2) require or permit a licensee to file a statement under oath as to the facts and circumstances of a matter to aid in an examination; and

(3) seek a court order to seize the following items from the federally insured bank that a licensee maintains its trust account at: money, books, records, accounts and other property that the licensee keeps under the control of the federally insured bank.

(c) The commissioner shall preserve a full record of a licensee's examination, including a statement of its condition. Examination records and reports, including work papers, information derived from reports or in response to reports and any copies thereof in a licensee's possession shall be confidential and privileged communications, shall not be subject to subpoena and shall

197 not be a public record under clause 26 of section 7 of chapter 4. For the purpose of this
198 paragraph, examination records and reports shall include examination records and reports that
199 any bank regulatory agency of a state, federal or foreign government conducted, which that
200 agency or government considers confidential, and which are in possession of the commissioner.
201 In any proceeding before a court, the court may issue a protective order to seal the record
202 protecting the confidentiality of a record, other than a record on file with the court or filed in
203 connection with the court proceeding, and the court may exclude the public from any portion of a
204 proceeding at which a record may be disclosed. The commissioner shall distribute copies of
205 examination reports to a licensee for its use only and the licensee shall not publish these reports
206 to any person or agency without the commissioner's prior written approval. The commissioner
207 may distribute any information, report, examination or statement relating to a licensee to any
208 regulatory or law enforcement agency.

209 Section 9. The commissioner may investigate the books, accounts, records and files of a person
210 that the commissioner has reason to believe is conducting the business of a provider in the
211 commonwealth, whether the person acts or claims to act as a principal or agent, or under or
212 without the authority of this chapter.

213 Section 10. (a) A licensee shall complete and furnish a written budget analysis to an individual
214 before an individual may execute an agreement. A licensee shall not execute an agreement
215 unless the budget analysis indicates that an individual can reasonably afford the payments
216 established under the stated agreement. The commissioner shall determine the information that a
217 budget analysis shall require.

218 (b) A licensee shall not accept compensation or gain, directly or indirectly, for performing
219 debt management services before an individual executes an agreement. The agreement shall
220 contain information that the commissioner shall determine. A licensee shall, at the time the
221 agreement is executed, distribute a copy to the consumer.

222 (c) In addition to other items as the commissioner may require, the agreement shall:

223 (1) disclose the debt management services that the licensee will perform;

224 (2) disclose the fees that the licensee will charge the consumer;

225 (3) disclose that agreements may not be suitable for all individuals;

226 (4) if applicable, disclose that the agreement does not cover secured debt; and

227 (5) disclose the list of debts that the agreement covers and the interest rate of those debts at the
228 time as provided to the licensee by the consumer at the time of the agreement.

229 Section 11. (a) A consumer may rescind an agreement until midnight of the third business day
230 after the consumer executed the agreement by notifying the licensee in writing of his intention to
231 rescind the agreement. Notice is deemed effective on the date the consumer mails such notice.

232 (b) A licensee shall furnish a notice of rescission at the time the agreement is signed in a form
233 and shall contain conditions as the commissioner shall determine.

234 (c) All fees and payments that the consumer made shall be refunded in full on or before the tenth
235 business day after a licensee receives a rescission notice.

236 Section 12. (a) If a consumer fails to honor the consumer's contractual obligations on or
237 before the 60th day after the consumer was required to perform under an agreement, then the

238 licensee may terminate the agreement with the consumer. Notwithstanding the foregoing, if a
239 consumer refuses to pay any fee to a licensee after such payment has been earned by the licensee,
240 then the licensee may terminate its agreement with the consumer immediately.

241 (b) If a licensee terminates an agreement, the licensee shall immediately return to the
242 consumer any money that the licensee held in trust for the consumer.

243 (c) A consumer may terminate an agreement at any time without a termination penalty.

244 Section 13. A licensee shall file with the commissioner an annual report in a form that the
245 commissioner shall prescribe. The report shall be in writing, under oath, and contain information
246 related to the conduct of a licensee's business. If a licensee neglects to file an annual report or
247 fails to amend the same on or before the fifteenth day after the commissioner provides notice to
248 the licensee, then the licensee shall pay a fine of \$50 per day during which the neglect or failure
249 to amend the same continues.

250 Section 14. (a) A licensee shall maintain a separate trust account at a federally insured bank to
251 hold funds that it receives from consumers. Trust accounts shall comply with regulations that the
252 commissioner promulgates hereunder.

253 (b) A licensee shall not commingle money collected for a creditor with the licensee's own funds
254 or use any part of a consumer's money in the conduct of the licensee's business.

255 Section 15. A licensee shall not impose charges or receive payment for debt management
256 services until the licensee and the individual have signed an agreement that complies with
257 section 10 and the regulations promulgated hereunder

258 Section 16. (a) A statement of accounting shall contain the following information:

259 (1) the amount of money that the consumer has paid to the provider since the provider prepared
260 the last statement;

261 (2) the amounts, dates and creditors that the provider paid on the consumer's behalf, since the
262 provider prepared the last statement;

263 (3) the amounts of money that the provider collected as compensation from the consumer's
264 payments;

265 (4) the amount of money that the provider holds in trust for the consumer; and

266 (5) if, since the last statement date, the consumer's creditor accepted a payment from the
267 provider in full or partial satisfaction of the consumer's debt with that creditor: (i) the total
268 amount of money that the provider paid the creditor to settle a consumer's debt; (ii) the amount
269 of the debt at the time the provider and a consumer entered their agreement; (iii) the amount of a
270 debt at the time a consumer's creditor agreed to settle a debt with a provider; and (iv) the amount
271 of compensation that the provider receives to settle a debt.

272 (b) A licensee shall distribute a statement of accounting to a consumer:

273 (1) while an agreement is in effect: (i) at least once per month; and (ii) on or before the fifth
274 business day after a consumer demands a statement of accounting from a licensee; provided,
275 however, a licensee may refuse to comply with more than 1 request for a statement of accounting
276 per month; and

277 (2) on the day on which a consumer or a licensee rescinds or terminates an agreement.

278 (c) Notwithstanding the requirement set forth in clauses (1) and (2) of subsection (b), a
279 provider that enables, or arranges to enable, 24 hours a day, 7 days a week, electronic access by a

280 consumer to all of the consumer's deposit account transaction information, including, but not
281 limited to, all deposit and withdrawal activity, and electronic access by a consumer to debt
282 management account activity, including, but not limited to, such settlement information as
283 account status, settlement dates, settlement amounts and fees paid, shall be deemed to have
284 satisfied the statement of account distribution requirements in subsection (b).

285 Section 17. (a) A person shall not advertise, announce, broadcast, display, distribute, print,
286 publish, televise or permit any other person to advertise, announce, broadcast, display, distribute,
287 print, publish or televise on its behalf a statement or representation that is deceptive, false or
288 misleading.

289 (b) Advertisements that a licensee authorizes shall clearly state its licensed business name and its
290 license number.

291 Section 18. If a licensee delegates a duty or obligation that this chapter mandates to another
292 person, including an independent contractor, the licensee is liable for the other person's conduct
293 that violates an agreement, this chapter or any of regulation of the division.

294 Section 19. A person that violates section 2 or any rule or regulation promulgated thereunder
295 shall pay a fine of not more than \$2,000 or be imprisoned in a house of correction for not more
296 than 2 1/2 years or be imprisoned in state prison for not more than 5 years, or both a fine and
297 imprisonment. Each day a violation occurs or continues shall be deemed a separate offense. This
298 section's penalty provision shall be in addition to, and not in lieu of, the penalty provisions under
299 any other law applicable to providers for violating section 2 or any rule or regulation made
300 thereunder.

301 Section 20. (a) If the commissioner finds that a person has violated this chapter, a rule or
302 regulation adopted thereunder or any other law applicable to the conduct of a provider, the
303 commissioner may order or impose a penalty upon the person, which shall not exceed \$5,000 per
304 violation of law, rule or regulation, up to a maximum of \$100,000 plus the costs of investigation.

305 (b) Nothing in this section limits an individual's right to bring an action against a provider that
306 injured the individual to recover damages or restitution in a court of competent jurisdiction.

307 (c) A finding or order that the commissioner issues under this section shall be reviewable under
308 chapter 30A.

309 Section 21. A violation of this chapter shall be a violation of chapter 93A and an aggrieved
310 individual may recover damages from a provider under this chapter and chapter 93A.

311 SECTION 3. This act shall take effect 180 days after its passage, provided, however, that the
312 authority for the commissioner to promulgate regulations in section 2 of chapter 255G of the
313 General Laws, as appearing in section 2, shall take effect upon passage.